

**Special Instructions  
To Respondents Regarding  
Compliance with  
The City of Greensboro  
Minority and Women Business  
Enterprise (M/WBE) Program**

**Effective: January 1, 2014**



**Greensboro City Council  
Melvin Municipal Office Building  
Greensboro, North Carolina 27402**

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Pursuant to Chapter 2, Article IV, Division 2, Section 2-117, of the Greensboro Code of Ordinances the Minority/Women Business Enterprise program plan was adopted to promote the economic inclusion and full equitable utilization and development of firms that engage in business with the City in the Greensboro Marketplace

## **I. STATEMENT OF POLICY**

It is the policy of the City not to enter into a contract or to be engaged in a business relationship with any business entity that has discriminated in the solicitation, selection, hiring or commercial treatment of vendors, suppliers, Subcontractors or commercial customers on the basis of age, color, biological sex, disability, national origin, race, religion, or any otherwise unlawful use of characteristics regarding the vendor's, supplier's or commercial customer's employees or owners; provided that nothing in this policy shall be construed to prohibit or limit otherwise lawful efforts to remedy the effects of discrimination that have occurred or are occurring in the Relevant Marketplace.

## **II. COMMERCIAL NONDISCRIMINATION POLICY**

"As a condition of entering into this agreement, the company represents and warrants that it will comply with the City's Commercial Nondiscrimination Policy, as described under Section V. A. 1. of the M/WBE Program Plan. As part of such compliance, the company shall not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring or commercial treatment of Subcontractors, vendors, suppliers, or commercial customers, nor shall the company retaliate against any person for reporting instances of such discrimination. The company shall provide equal opportunity for Subcontractors, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the City's Relevant Marketplace. The company understands and agrees that a material violation of this clause shall be considered a material breach of this agreement and may result in termination of this agreement, disqualification of the company from participating in City contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party."

### III. DEFINITIONS

**Annual Aspirational Goal** – a non-mandatory annual aspirational percentage goal for overall M/WBE Prime and subcontract participation in City of Greensboro contracts is established each year for Construction, Professional Services, Goods and Other Services Contracts. This Annual Aspirational Goal is to be set (and thereafter adjusted) by the Goal Setting Committee (GSC) on an annual basis based upon relative M/WBE availability data to be collected by the City through its Centralized Bidder Registration (“CBR”) system. Annual Aspirational Goals are not to be routinely applied to individual contracts, but are intended to serve as a benchmark against which to measure the overall effectiveness of the M/WBE Program on an annual basis, and to gauge the need for future adjustments to the mix and to the aggressiveness of remedies being applied under the Program. Percentage Goals for M/WBE participation may be established by the GSC on a contract-by-contract basis based upon similar data and analysis for the particular goods and services being purchased in a given contract.

**Award** – the final selection of a Respondent for a specified Prime Contractor subcontract dollar amount. Contract awards are made by the City to Prime Contractors or vendors and by Prime Contractors or vendors to Subcontractor or sub-vendors, usually pursuant to a solicitation process. (Contract awards are to be distinguished from contract payments in that they only reflect the anticipated dollar amounts instead of actual dollar amounts that are paid to a contractor under an awarded contract).

**Best Value Contracting** – a purchasing solicitation process which may evaluate factors other than price. Evaluation criteria for selection may include a Respondent’s previous experience and quality of product or services procured, and other factors identified in the applicable solicitation.

**Bidder / Participant** – Any person, firm, company, partnership, corporation, association, or joint venture seeking to be awarded a contract or subcontract on a project that is at least partially funded or supported in a pecuniary fashion by the City.

**Certification** – the process by which the M/WBE Office determines a firm to be a bona-fide minority or women-owned business enterprise. A firm may apply for multiple Certifications that cover each status category (e.g., MBE or WBE) for which it is able to satisfy eligibility standards. The M/WBE staff may contract these certification services to a State, regional Certification agency or other entity that agrees to abide by the City’s standards and criteria for certification. For purposes of Certification, the City accepts any firm that is certified by the State of North Carolina Secretary of Administration, local government entities, and other organizations identified herein that have been determined by the City Manager or his designee to have adopted Certification standards and procedures similar to those followed by the M/WBE Program, provided the prospective firm satisfies the eligibility requirements set forth in this Program Plan.

**City** – refers to the City of Greensboro, NC.

**Commercially Useful Function** – an M/WBE firm performs a Commercially Useful Function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, staffing, managing and supervising the work involved. To perform a Commercially Useful Function, the M/WBE firm must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quantity and quality, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether an M/WBE firm is

performing a Commercially Useful Function, an evaluation must be performed of the amount of work subcontracted, normal industry practices, whether the amount the M/WBE firm is to be paid under the contract is commensurate with the work it is actually performing and the M/WBE credit claimed for its performance of the work, and other relevant factors. Specifically, an M/WBE firm does not perform a Commercially Useful Function if its role is limited to that of an extra Respondent in a transaction, contract or project through which funds are passed in order to obtain the appearance of meaningful and useful M/WBE participation, when in similar transactions in which M/WBE firms do not participate, there is no such role performed.

**Evaluation Preference** – A Program Element that may be applied by the Goal Setting Committee to Construction, Professional Services, Goods and Other Services contracts that are to be awarded on a basis that includes factors other than lowest price (i.e., Best Value Contracting), and wherein responses that are submitted to the City by M/WBE firms may be awarded additional Points in the evaluation process in the scoring and ranking of their proposals against those submitted by other prime Respondents or Bidder / Participants.

**Goal Setting Committee (GSC)** – a committee, or series of committees, appointed and chaired by the City Manager or designee that includes, at a minimum, the M/WBE Facilitator or designee, and /or the Director of Financial and Administrative Services, and / or the Director of Engineering and Inspections or their designees, and the Director or designee of the Originating Department (assuming the Originating Department is neither the Financial and Administrative Services Department nor the Engineering and Inspections Department) all without duplication of designees. The City Manager or designee may also appoint two ex-officio members of the M/WBE Coordinating Committee to serve on any GSC purely in an advisory and non-voting capacity. The GSC establishes M/WBE Program Goals for the City of Greensboro (e.g., Annual Aspirational Goals and Contract-by-Contract Subcontracting Goals) based upon Industry Categories, vendor availability and project-specific characteristics. The GSC also makes determinations about which Program Elements are to be applied to specific contracts based upon various criteria.

**Good Faith Efforts** – documentation of the Respondent’s intent to comply with M/WBE Program Goals and procedures as described in section VII of the M/WBE Special Instructions.

**Greensboro Metropolitan Statistical Area (MSA)**– also known as the Relevant Marketplace, the 10-county Greensboro – Winston-Salem – High Point geographic market area from which the City’s MGT Disparity Study Update analyzed contract utilization and availability data for disparity (currently including the counties of Guilford, Randolph, Rockingham, Alamance, Surry, Davidson, Davie, Forsyth, Stokes, and Yadkin).

**Minority/Women Business Enterprise (M/WBE)** – any firm that is certified as either a **Minority Business Enterprise** or as a **Women Business Enterprise**, and which is at least fifty-one percent (51%) owned, managed and Controlled by one or more of the identified Minority Group Members and/or women as indicated herein by Industry Category, and that is ready, willing and able to sell goods or services that are purchased by the City of Greensboro:

The categories of Minority Group Members and/or women that are eligible for certification as owning, managing, and controlling M/WBEs by Industry Categories are narrowly tailored based upon Disparity Study Update results as follows:

**Goods and Other Services:** African-Americans, Hispanic-Americans, and Non-Minority females

**Professional Services:** African-Americans, Hispanic-Americans, Native Americans, and Non-Minority females

**Construction Prime Contracting:** African-Americans and non-Minority females

**Construction Subcontracting:** African-Americans, Hispanic-Americans, Asian-Americans, Native Americans, and Non-Minority females

**M/WBE Evaluation Preference** – a Program Element that the City may apply to requests for proposals or qualifications (RFPs or RFQs) on City Construction Manager, Construction Manager at Risk, and Professional Services contracts that are issued pursuant to a Best Value Contracting method or other methods of procurement wherein criteria other than lowest price are factored into the selection process. M/WBEs that submit responses for these kinds of solicitations are awarded additional Points in the scoring of their responses when evaluating and ranking their responses against those submitted by non-minority firms.

**Minority Business Enterprise (MBE)** – any legal entity, except a joint venture, that is organized to engage in for-profit transactions, which is certified as being at least fifty-one percent (51%) owned, managed and Controlled by one or more Minority Group Members, and that is ready, willing and able to sell goods or services that are purchased by the City. To qualify as an MBE, the enterprise shall meet the **Significant Business Presence** requirement as defined herein. Unless otherwise stated, the term “MBE” as used in this Program Plan is not inclusive of women-owned business enterprises (WBEs).

**Minority Group Members** – African-Americans, Hispanic Americans, Asian Americans and Native Americans legally residing in, or that are citizens of, the United States or its territories, as defined below:

**African-Americans:** Persons having origins in any of the black racial groups of Africa as well as those identified as Jamaican, Trinidadian, or West Indian.

**Hispanic-Americans:** Persons of Spanish or Portuguese culture with origins in Mexico, South or Central America, or the Caribbean Islands regardless of race.

**Asian-Americans:** Persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands.

**Native Americans:** Persons having no less than 1/16th percentage origin in any of the Native American Tribes of North America as recognized by the U.S. Department of the Interior, Bureau of Indian Affairs and as demonstrated by possession of personal tribal role documents.

**Originating Department** – the City department or authorized representative of the City which issues a solicitation, or for which a solicitation is issued on behalf of, for its purchase of goods or services.

**Payment** – dollars actually paid to Prime Contractors and/or Subcontractors and vendors for City contracted goods and/or services.

**Points** – the quantitative assignment of value for specific evaluation criteria in the vendor selection process used in some Construction, Professional Services, and Other Services contracts (e.g., up to 10 points out of a total of 100 points assigned for the degree of M/WBE participation of a Respondent team as stated in response to a Request for Proposals).

**Prime Contractor** – the vendor or contractor to whom a purchase order or contract is issued by the City of Greensboro for purposes of providing goods or services for the City.

**Relevant Marketplace** – also known as “Greensboro Metropolitan Statistical Area,” the geographic market area for application of the M/WBE Program, as determined for purposes of collecting data for the MGT disparity study (and for determining eligibility for participation under various Program Elements established by this Program Plan) is defined as the Greensboro Metropolitan Statistical Area (Greensboro – Winston-Salem – High Point MSA), currently including the ten counties of Guilford, Randolph, Rockingham, Alamance, Surry, Davidson, Davie, Forsyth, Stokes, and Yadkin.

**Respondent** – a vendor or Bidder / Participant submitting a bid, statement of qualifications, or proposal in response to a solicitation issued by the City.

**Responsible** – a firm which is capable in all respects to fully perform the contract requirements and has the integrity and reliability which will assure good faith performance of contract specifications.

**Responsive** – a firm’s submittal (bid, response or proposal) conforms in all material respects to the solicitation (Invitation for Bid, Request for Qualifications, or Request for Proposal) and shall include compliance with M/WBE Program requirements.

**Significant Business Presence** – to qualify for this Program, an M/WBE firm must be headquartered or have a *significant business presence* for at least one year within the Relevant Marketplace, defined as: an established place of business in one or more of the ten counties that make up the Greensboro Metropolitan Statistical Area (Greensboro MSA), and from which at least 25% of its total full-time, part-time and contract employees are regularly based, and from which a substantial role in the M/WBE's performance of a Commercially Useful Function is conducted. A location utilized solely as a post office box, mail drop or telephone message center or any combination thereof, with no other substantial work function, shall not be construed to constitute a significant business presence.

**Subcontractor** – any vendor or contractor that is providing goods or services to a Prime Contractor in furtherance of the Prime Contractor’s performance under a contract or purchase order with the City. A copy of the binding agreement between the Prime Contractor and the Subcontractor shall be submitted prior to contract execution by the City and issuance of a Notice to Proceed.

**Utilization Documentation** – a binding part of the contract which includes the name of all Subcontractors to be utilized in the contract, specifying the M/WBE Certification category for each, as approved by the M/WBE Respondent. Additions, deletions or modifications of the utilization amounts or substitutions or deletions of M/WBE Subcontractors require an amendment to be approved by the M/WBE Office or designee.

**Women Business Enterprises (WBE)** - any legal entity, except a joint venture, that is organized to engage in for-profit transactions, that is certified for purposes of this Program Plan as being at least fifty-one percent (51%) owned, managed and Controlled by one or more non-minority female Individuals that are lawfully residing in, or are citizens of, the United States or its territories, that is ready, willing, and able to sell goods or services that are purchased by the City and that meets the Significant Business Presence requirements as defined herein. Unless otherwise stated, the term “WBE” as used in this Program Plan is not inclusive of MBEs.

#### **IV. PROGRAM COMPLIANCE RESPONSIBILITIES**

##### **M/WBE Program Staff**

- Ensure compliance with the provisions of this M/WBE Program Plan;
- General oversight and management of the Goal Setting Committee process, certification, graduation, monitoring, Good Faith Effort waivers, and reporting requirements;
- Investigate program violation allegations and provide written recommendations for remedial actions and sanctions;
- Determine Prime Contractor compliance with M/WBE Program requirements prior to contract award recommendations to City Manager or designee, and also prior to Originating Department’s close-out of contracts and release of final retainage;
- Audit 100% of the reported payments to M/WBE and non-M/WBE Subcontractors to ensure that the Prime Contractors’ reported subcontract participation is accurate.

##### **Originating Department**

- Ensure that solicitations emanating from the department adhere to the procedures and provisions set forth in this Program Plan;
- Monitor compliance with the Program Element requirements during the term of the contract;
- Provide a de-briefing to any non-recommended Respondent, upon request. At a minimum, debriefings shall include disclosures of scoring criteria and scores from the evaluation panel responsible for making the selection for each response that was evaluated;
- Maintain accurate records for each contract awarded, including unsuccessful Respondents, dollar value, the nature of the goods or services to be provided, the name of the contractor awarded the contract, the efforts it employed to solicit responses from M/WBEs, and all subcontracts awarded by the Prime Contractor identifying for each its dollar value, the nature of the goods or services provided and the name of the Subcontractor(s);
- Send notification before solicitations are due to minority and women trade associations and contractor’s associations regarding pending Formal Solicitations;
- Ensure that all required statistics and documentation are submitted to the M/WBE Office as requested;
- Notify the M/WBE Office of all change orders and amendments to contracts that are subject to this Program Plan and take necessary steps to ensure that Program Elements applied to the contract are also extended and enforced.

##### **Respondent Responsibilities**

- Permit the M/WBE Office to inspect any relevant matter, including records and the jobsite, and to interview Subcontractors and workers (field compliance);



- Submit accurate progress payment information with each invoice for each of its Subcontractors, including M/WBE Subcontractors;
- Ensure that all Subcontractors are paid any undisputed amount to which the Subcontractor is entitled within 10 calendar days of receiving a progress or final payment from the City and otherwise comply with City's contract terms and conditions which sets forth the obligations of the Prime Contractor and Subcontractors and the remedies for delinquency or nonpayment of undisputed amounts.
- Notify the City in writing of any changes to their subcontracting plan. All changes (substitution and/or termination) must be approved in advance and in writing by the M/WBE Office.
- Unforeseen circumstances:
  - If at any time after submission of a solicitation response and before execution of a contract, the apparent successful Respondent determines that a certified M/WBE listed on the participation schedule has become or will become unavailable, then the apparent successful Respondent shall immediately notify the M/WBE Office.
  - Any desired change in the M/WBE participation schedule shall be approved in advance by the M/WBE Office and shall indicate the Prime Contractor's Good Faith Efforts to substitute another certified M/WBE Subcontractor (as appropriate) to perform the work.
  - Submit a waiver request to the M/WBE Office in the event such Good Faith Efforts are unsuccessful.
  - Any desired changes (including substitutions or termination and self-performance) must be approved in writing in advance by the M/WBE Office.
  - Notify the Originating Department and M/WBE Office of transfer or assignment of contract with the City.
  - Retain a record of all subcontractor payments for a minimum of four years following projection termination date.

## **V. EVALUATION PANEL**

For each Formal Solicitation that uses Best Value Contracting as the method of procurement, the Originating Department shall form an evaluation panel consisting of no fewer than five persons for purposes of reviewing and scoring proposals and making the selection of the vendor or contractor for contract award purposes. At least one of the representatives on the evaluation panel shall be the M/WBE Manager or representative. At least one of the other evaluation panel members shall be from a City department other than the Originating Department. Each evaluation panel member is responsible for thoroughly reviewing and fairly scoring each responsive proposal to the best of his or her ability consistent with the selection criteria posted in the solicitation.

## VI. M/WBE PARTICIPATION REQUIREMENTS

The City of Greensboro has Annual Aspirational Goals for overall M/WBE prime and subcontract participation on City Goods and Services Contracts. This Annual Aspirational Goal for M/WBE participation in City Goods and Other Services contracts (prime and subcontract dollars combined) has been established at MBE 5% and WBE 3% based upon M/WBE availability by industry.

**The Annual Aspirational Goal** is defined as a non-mandatory annual aspirational percentage goal for overall M/WBE Prime and subcontract participation in City of Greensboro contracts. Annual Aspirational Goals are not routinely applied to individual contracts, but are intended to serve as a benchmark against which to measure the overall effectiveness of the M/WBE Program on an annual basis, and to gauge the need for future adjustments to the mix and to the aggressiveness of remedies being applied under the Program. For a full definition of Annual Aspirational Goals, see page section III on page 5.

There are no specific M/WBE participation goals assigned to this contract. While no M/WBE goals are assigned to this contract, the Contractor should make every reasonable effort to solicit M/WBE firms to participate as subcontractors, service providers and suppliers on this project. Whenever a subcontractor, supplier or service provider is selected, the information shall be reported on Affidavit C, Subcontractor Utilization Commitment.

**The following Minority Group Members and/or women:** *African-American, Hispanic-American, and non-Minority females* **are eligible to participate on the City of Greensboro Other Services contracts.**

**To document M/WBE utilization, the contractor shall submit an executed:**

- a. Affidavit C, Subcontractor Utilization Commitment documenting all (M/WBE and Non-M/WBE Subcontractors); ***or if applicable***
- b. Affidavit E, Statement Of Intent To Perform Work Without Subcontracting (refer to Section VIII(B) for more information about Affidavit E).

## **VII. PRE-PROPOSAL CONFERENCE**

The City shall hold a pre- proposal conference for all prospective Respondents and M/WBEs for the purpose of explaining the provisions and applications of this program and answering questions regarding the process for responding to the proposal and making their oral presentation. Upon request, data on M/WBEs interested and/or capable of engaging in the prospective contract shall be made available to prospective Respondents, contractors, and subcontractors.

## **VIII. CALCULATION OF M/WBE PARTICIPATION IN CONTRACTS AWARDED**

The degree of participation by minority-majority joint ventures, M/WBE contractors and M/WBE suppliers in contracts awarded will be counted as follows:

- A. The City may count as its M/WBE participation only expenditures to MWBE firms that perform a commercially useful function in the work of a contract. An M/WBE is performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, staffing, managing and supervising the work involved. To determine whether an M/WBE is performing a commercially useful function, the City will take into account the amount of work subcontracted, industry practices, and other relevant factors.
- B. An M/WBE firm does not perform a Commercially Useful Function if its role is limited to that of an extra Respondent in a transaction, contract or project through which funds are passed in order to obtain the appearance of meaningful and useful M/WBE participation, when in similar transactions in which M/WBE firms do not participate, there is no such role performed.
- C. The total dollar value of a contract to an M/WBE owned and controlled by both minority males and non- minority females is counted as participation for minorities and women respectively, in proportion of the percentage of ownership and control of each group in business. The total dollar value of an M/WBE owned and controlled by minority women is counted as either the minorities' or women's participation, but not both.
- D. The total dollar value of participation by a certified M/WBE will be based upon the value of work actually performed by the M/WBE and the actual payments to M/WBE firms by the Contractor.
- E. Consistent with normal industry practices, an M/WBE firm may enter into subcontracts. However the value of the subcontract work may be counted toward the M/WBE goals only if the subcontractor is an M/WBE. Work subcontracted to a non-M/WBE firms will not be counted towards the M/WBE goals.

## **IX. PROCEDURES TO ENSURE RESPONDENTS MAKE GOOD FAITH EFFORTS TO PROVIDE EQUAL OPPORTUNITY TO M/WBEs TO PARTICIPATE ON THE CONTRACT**

The Respondent shall make reasonable Good Faith Efforts to solicit proposals from individual certified M/WBEs having their principal place of business or a Significant Business Presence in the 10-county area that is defined as the Greensboro MSA whenever they are a potential source for services necessary to perform the contract. Such solicitations shall occur no less than ten days in advance of the City's proposal due date.

A Respondent shall consider subcontractor proposals received from M/WBEs. If a proposal is rejected, the Respondent shall state in writing the reasons for the rejection.

The M/WBE Office will may take into account following:

1. Timely solicitation of proposals/qualification statements from all qualified M/WBE firms available to perform subcontracts for a Commercially Useful Function on behalf of the Respondent;
2. Documentation of the Respondent's attendance at any pre-proposal conference meetings that was scheduled by the City;
3. Documentation of the Respondents efforts to subdivide work for subcontracting purposes to enhance opportunities for M/WBE firms;
4. Documentation of good faith negotiations between the Respondent and all of its prospective subcontractors;
5. Documentation of consultations with trade associations and consultants that represent the interests of M/WBEs in order to identify qualified and available M/WBE Subcontractors;
6. Documentation of good faith efforts to utilize "other" categories of certified M/WBE firms.

### **Documentation of Good Faith Efforts**

The Subcontractor Utilization Commitment form should be used to document all (including non-M/WBE) subcontractors being utilized on the contract.

An executed Letter of Intent to Perform as an M/WBE Subcontractor must be submitted for each M/WBE firm proposed for use on the contract within three days of being so notified as the successful respondent.

If no subcontractors are utilized, the respondent shall enter zero for the total MBE and WBE utilization and submit the executed Subcontractor Utilization Commitment form with the response.

### **Determination of Program Compliance and Non-Compliance**

1. The M/WBE Office, along with contracting staff of each City department shall monitor compliance with the Program Element requirements during the term of the contract. This can be done through documentation, site visits, inspections, etc., with periodic reports to the M/WBE Program Office.

2. If it is determined that there is cause to believe that a Prime contractor or subcontractor has failed to comply with any of the requirements of this Program Plan, or with the contract provisions pertaining to M/WBE utilization, the M/WBE Office so notify the Originating Department and the contractor.
3. The M/WBE Manager or designee may require such reports, information and documentation from contractors, and the head of any City department, division or office as are reasonably necessary to determine compliance with the Program Plan requirements, within fifteen (15) calendar days after the notice of noncompliance.
4. If the requested materials are not received within fifteen (15) calendar days, then a finding of noncompliance is determined and appropriate penalties and sanctions will apply as stated in Section VIII of this Special Instructions to Respondents.
5. It shall be the joint responsibility of the M/WBE Manager or designee and the Director of the Originating Department or designee to attempt to resolve the noncompliance with the requirements of this Program Plan, or the contract provisions pertaining to M/WBE utilization, within fifteen (15) calendar days.
6. If noncompliance cannot be resolved within the fifteen (15) calendar days, the M/WBE Manager or designee and the Director of the Originating Department or designee shall submit written recommendations to the City Manager or designee and if the City Manager or designee concurs with the finding, such sanctions as stated in Section IX of this Special Instructions to Respondents shall be imposed.
7. Problems with compliance when appropriate will be referred to the "Good Faith" Committee. M/WBE Office and a representative from the Legal Department will serve as liaisons to the Committee.
8. Upon a preliminary determination of noncompliance by the operating department and M/WBE Office, the "Good Faith" Committee shall receive all supporting data of good faith efforts from the Originating Department and shall cause a contractor to be duly notified that the "Good Faith" Committee shall conduct a hearing with the contractor and/or his representative. The Contractor may be represented and may present evidence and submit documentation pertaining to good faith efforts to provide equal opportunity for M/WBEs certified with the North Carolina Secretary of Administration to participate in subcontracting and significant material supplier opportunities available under the prime contract.
9. The "Good Faith" Committee will make its determination on the adequacy of the good faith efforts and report its findings and any sanctions imposed to the Contractor within five (5) calendar days of the conclusion of the hearing. The Contractor may appeal the decision rendered by the "Good Faith" Committee to the City Manager, or his designee in writing within five (5) calendar days of notification of the Committee's decision, but not otherwise.
10. The City Manager or his designee shall schedule a hearing with the contractor and/or his representative. The record of the "Good Faith" Committee hearing shall be presented on behalf of the Contractor and the City. The City Manager or his designee shall make a decision and

notify the Contractor within five (5) calendar days following the hearing. The decision of the City Manager or his designee shall be final.

## **X. SANCTIONS**

Upon determination and recommendation of sanctions by the City Manager or designee regarding the failure of a contractor, vendor, Respondent or other business representative to comply with any portion of this Program Plan, the non-complying party shall be subject to any or all of the following penalties:

- i) Suspension of contract;
- ii) Withholding of funds;
- iii) Rescission of contract based upon a material breach of contract pertaining to M/WBE Program compliance;
- iv) Refusal to accept a response or proposal; and
- v) Disqualification of a Respondent, contractor or other business from eligibility for providing goods or services to the City for a period not to exceed two years (upon City Council approval).

It is a violation of this Program Plan to:

- i) Fraudulently obtain, retain or attempt to obtain, retain or aid another in fraudulently obtaining, retaining or attempting to obtain or retain Certification status as an MBE, WBE, or M/WBE for purposes of this Program Plan.
- ii) Willfully falsify, conceal or cover up by a trick, scheme or device, a material fact or make any false, fictitious or fraudulent statements or representations, or make use of any false writing or document, knowing the same to contain any false, fictitious or fraudulent statement or entry pursuant to the terms of this Program Plan.
- iii) Willfully obstruct, impede or attempt to obstruct or impede any authorized official or employee who is investigating the qualifications of a business entity which has requested Certification as an M/WBE.
- iv) Fraudulently obtain, attempt to obtain or aid another person fraudulently obtaining or attempting to obtain public monies to which the person is not entitled under the terms of this Program Plan.
- v) Make false statements to any entity that any other entity is or is not certified as an M/WBE for purposes of this Program Plan.

Any person who violates the provisions of this section shall be subject to these sanctions, as well as any other remedies available under law up to the maximum penalty provided by law. In the event any of the sanctions set forth above are to be utilized, then appropriate provisions shall be contained in the specifications which will expose the contractor to any of those sanctions so set out therein. which will expose the contractor to any of those sanctions so set out therein.

## **XI. M/WBE GOOD FAITH EFFORTS APPEAL PROCESS**

If a proposal is rejected because the M/WBE Coordinator determined that submitted documentation is inadequate to establish Good Faith Efforts, the Respondent may request a review of this determination in accordance with the following process:

The Respondent who wishes to dispute the Good Faith Efforts decision of the M/WBE Office may have that decision reviewed by the City Manager or designee provided the Respondent submits a request for review in writing to the Operating Department within five (5) business days of the date of the decision to reject the proposal. The request shall contain specific reasons and any supporting documentation for why the Respondent believes that the Good Faith Efforts decision was in error.

The Operating Department shall refer the matter to the City Manager or designee. The hearing shall be scheduled within ten (10) business days of the receipt of the review request. The Respondent will be provided all relevant documents in possession of the M/WBE Office. The City Manager or designee shall review the Good Faith Efforts decision with the Respondent and/or his representative and the M/WBE Coordinator. At the hearing, the Respondent may question the M/WBE Coordinator regarding the Good Faith Efforts decision.

The City Manager, or his designee, shall make a decision and notify the Respondent within five (5) business days following the hearing. The City Manager may affirm, reverse, or modify the Good Faith Efforts decision of the M/WBE Office. The decision of the City Manager, or designee, shall be final.

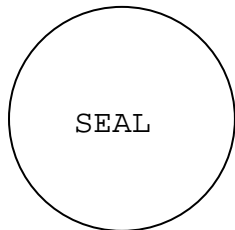
Name of Prime Contractor: \_\_\_\_\_ Project Name: \_\_\_\_\_

If the contract/project M/WBE participation requirements are not achieved, the bidder/participant shall provide the following documentation of Good Faith Efforts to the City.

MBE	WBE	Company Name	Email Address or Fax Number for Initial Contact	Date of Initial Contact	Service/ Material/ Supplies to be Provided	Date of Follow Up Telephone Contact	Phone Number	Person Contacted	Results

(Submit additional Pages, if necessary)

Pursuant to “Special Instructions to Bidders Regarding Compliance with the City of Greensboro Minority and Women Business Enterprise (MWBE) Program Policies”, the Bidder certifies that the above Minority/Women-owned Business Enterprise(s) was (were) contacted in good faith. The undersigned hereby certifies that he or she has read the terms of this certification and is authorized to bind the Bidder in accordance herewith. Signature and title of authorized official of the company and the date must be properly executed or this document will be deemed nonresponsive.



Date: \_\_\_\_\_ Name of Authorized Officer: \_\_\_\_\_  
 Signature: \_\_\_\_\_ Title: \_\_\_\_\_  
 State of \_\_\_\_\_ County of \_\_\_\_\_  
 Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_  
 Notary Public \_\_\_\_\_ My commission expires: \_\_\_\_\_

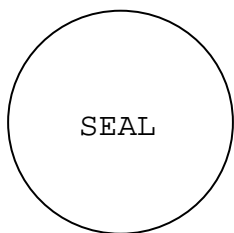


Name of Prime Contractor: \_\_\_\_\_ Project Name: \_\_\_\_\_

**\*\*Are you a certified M/WBE?** \_\_\_\_\_ **Yes** \_\_\_\_\_ **No** \_\_\_\_\_**The Bidder/Participant must indicate all subcontracts (M/WBE & NON-M/WBE) it intends to utilize as follows:**

MBE	WBE	NON M/WBE	Subcontractor Name & County**	Nature of Work to be Performed	% Utilization
<i>**Only M/WBE firms that are certified by the North Carolina Department of Administration or the North Carolina Department of Transportation and have a significant business presence within the Greensboro MSA (Guilford, Randolph, Rockingham, Forsyth, Stokes, Davie, Yadkin, Davidson, Alamance and Surry Counties) will be counted towards the M/WBE goal(s).</i>				<b>Total NON-M/WBE Utilization Commitment</b>	
				<b>Total MBE Utilization Commitment</b>	
				<b>Total WBE Utilization Commitment</b>	
				<b>(Submit Additional pages, if necessary)</b>	

The undersigned will enter into a formal agreement with the M/WBE firm(s) for work listed on this affidavit conditional upon execution of a contract with the City of Greensboro. Breach of this commitment constitutes breach of bidder's contract if awarded. The undersigned hereby certifies that he or she has read the terms of this certification and is authorized to bind the Bidder in accordance herewith. Signature and title of authorized official of the company and the date must be properly executed or this document will be deemed nonresponsive.



Date: \_\_\_\_\_ Name of Authorized Officer: \_\_\_\_\_  
 Signature: \_\_\_\_\_ Title: \_\_\_\_\_  
 State of \_\_\_\_\_ County of \_\_\_\_\_  
 Notary Public \_\_\_\_\_ My commission expires: \_\_\_\_\_

Affidavit D-1 – **Letter of Intent to Perform as a M/WBE Subcontractor** Contract Number: \_\_\_\_\_

Name of Prime Contractor: \_\_\_\_\_ Project Name: \_\_\_\_\_

The undersigned intends to perform work in connection with the above project as:

	Minority Business Enterprise		Women Business Enterprise
	Individual		A Corporation
	A Partnership		A Joint Venture

The undersigned is certified by the North Carolina Department of Administration or the North Carolina Department of Transportation and is headquartered or has a significant business presence within the Greensboro MSA.

The undersigned is prepared to provide the work (described below) in connection with the above project at the following price: \$ \_\_\_\_\_. Any changes in this commitment must be approved in advance by the M/WBE Office.

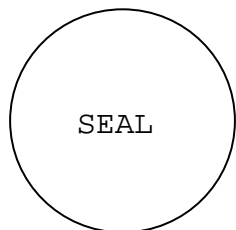
\_\_\_\_\_ % of the dollar value of the subcontract will be sub-let to (if applicable) \_\_\_\_\_.

You have projected the following commencement date for such work, and the undersigned is projecting completion of such work as follows:

Description of the Work	Projected Commencement Date	Projected Completion Date

This document shall not serve in a manner as an actual subcontract between the two parties. A separate binding agreement will describe in detail the contractual obligation of the contractor and the M/WBE subcontractor. The undersigned will enter into a formal agreement for the above work with you conditioned upon your execution of a contract with the City of Greensboro. Breach of this commitment constitutes breach of bidder's contract if awarded.

The undersigned hereby certifies that he or she has read the terms of this certification and is authorized to bind the Bidder in accordance herewith. Signature and title of authorized official of the company and the date must be properly executed or this document will be deemed nonresponsive.



Company Name: \_\_\_\_\_  
Date: \_\_\_\_\_ Name of Authorized Officer: \_\_\_\_\_  
Signature: \_\_\_\_\_ Title: \_\_\_\_\_  
State of \_\_\_\_\_ County of \_\_\_\_\_  
Notary Public \_\_\_\_\_ My commission expires: \_\_\_\_\_

**Statement of Intent to Perform Work without Subcontracting**

We, \_\_\_\_\_, hereby certify that it is our intent to perform 100% of the work required for the \_\_\_\_\_ Contract.  
(Name of Project & Contract Number)

In making this certification, the Bidder, pursuant to Item VIII, Section B, states the following:

1. That it is a normal business practice of the Bidder to perform all elements of this type of contract with its own work forces without use of subcontractors.
2. That if it should become necessary to subcontract some portion of the work at a later date, the Bidder will notify the City of Greensboro and institute good faith efforts to comply with all requirements of the M/WBE program in providing equal opportunities to M/WBE firms to subcontract the work.
3. That the Bidder will provide equal opportunity for M/WBEs to participate in significant material supplier opportunities available under the prime contract and to document good faith efforts as required herein.

Accompanying this certification the undersigned shall provide conclusive documentation which serves to verify that it is, and has been, a normal business practice for the indicated firm to perform all elements of this type of contract with its own workforce and without the use of subcontractors. The documentation must demonstrate that the firm has sufficient employees, equipment, and bonding to perform the entire contract without the use of subcontractors and that it has previously performed contracts of similar scope and comparable cost without the use of subcontractors.

Signature and title of authorized official of the company and the date must be properly executed or this document will be deemed nonresponsive.

The undersigned hereby certifies that he or she has read the terms of this certification and is authorized to bind the Bidder to the commitment herein set forth. Signature and title of authorized official of the company and the date must be properly executed or this document will be deemed nonresponsive.

Date: \_\_\_\_\_ Name of Authorized Officer: \_\_\_\_\_  
Signature: \_\_\_\_\_ Title: \_\_\_\_\_  
State of \_\_\_\_\_ County of \_\_\_\_\_  
Notary Public \_\_\_\_\_ My commission expires: \_\_\_\_\_

Affidavit G  
Contract # \_\_\_\_\_  
Estimate # \_\_\_\_\_

## Subcontractor Utilization Payment Report

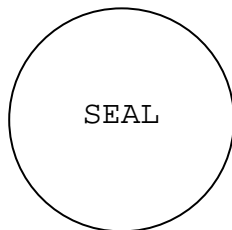
Date: \_\_\_\_\_

Contractor: \_\_\_\_\_

For Month of: \_\_\_\_\_

MBE	WBE	NON M/WBE	Date Paid	Vendor Name	Contract Amount	Type of Work	Amount Paid	Balance Due
						<b>Total Amount Paid to NON-M/WBE Firms</b>		
						<b>Total Amount Paid to MWBE Firms</b>		
						<b>Total Amount Paid to WBE Firms</b>		

I hereby certify that this information accurately reflects actual payments made and the dates the payments were made to Subcontractors/Material suppliers on the above reference project. Signature and title of authorized official of the company and the date must be properly executed or this document will be deemed nonresponsive.



Date: \_\_\_\_\_ Name of Authorized Officer: \_\_\_\_\_  
Signature: \_\_\_\_\_ Title: \_\_\_\_\_  
State of \_\_\_\_\_ County of \_\_\_\_\_  
Notary Public \_\_\_\_\_ My commission expires: \_\_\_\_\_